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Before the  
Federal Communications Commission  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the matter of )

The Cellular )

Telecommunications Industry )

Association Petition )

Requesting Forbearance from )

CMRS Number Portability )

Requirements )

CC Docket No. 95-116

COMMENTS ON THE PETITION REQUESTING FORBEARANCE  
FROM CMRS NUMBER PORTABILITY REQUIREMENTS  
SUBMITTED BY  
UPSTATE CELLULAR NETWORK

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**COMMENTS ON THE PETITION REQUESTING FORBEARANCE  
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SUBMITTED BY  
UPSTATE CELLULAR NETWORK**

Upstate Cellular Network ("UCN") hereby submits its comments in response to the Wireless Telecommunications Bureau's Public Notice requesting comments on the Cellular Telecommunication Industry Association's ("CTIA") request for forbearance from CMRS number portability requirements, released January 22, 1998. UCN is a licensee of, or a partner in a licensee of, twelve (12) cellular markets, one of which has not yet completed its five year build out period. As such, UCN will be greatly affected by the outcome of this proceeding.

UCN files these comments in support of the Petition for Forbearance submitted by CTIA. As CTIA argues, the Commission should forbear from enforcing the June 30, 1999 implementation deadline for CMRS service provider number portability.

The market for CMRS service providers is more competitive than ever. The consumer is presented with increasingly diverse choices

as to the providers and service options. In an attempt to remain competitive, UCN is aggressively building out its systems, increasing capacity, and converting to digital technology.

In order to meet the June 30, 1999 number portability requirement, UCN will be forced to spend between \$2,000,000 and \$3,000,000 on a system-wide platform. Absent the grant of the forbearance petition, UCN will have to divert funds dedicated to system improvement and expansion. UCN's plans to enhance coverage and rapidly usher in new services will have to be sharply curtailed. UCN believes other wireless carriers will be similarly affected. Thus, implementation of number portability will stall the growth of the wireless industry and the robust competition which benefits the public.

As CTIA explains in detail, forbearance from number portability requirements is appropriate under the three-prong test of Section 10 of the Communications Act of 1934. The first prong for forbearance requires that the regulation "is not necessary to ensure that the charges, practices, classifications, or regulations ....in connection with that telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory." CMRS consumers today have the right and ability to choose between numerous wireless carriers. Competition has forced carriers to battle for customers by constantly increasing coverage and capacity while providing service at the lowest possible price. As the Commission has previously found on interstate access matters, competition will protect the public from many abuses, and if not,

the Commission retains its complaint procedures as a remedy.<sup>1</sup> Number portability is not being unjustly or unreasonably withheld from the public, it is simply not yet time for this service.

The second prong of the forbearance test is likewise met. "[E]nforcement of such regulation...is not necessary for the protection of consumers." There is no doubt that number portability will be provided to subscribers, the issue is the timing of its provision. Given the robust competition between carriers, if number portability becomes a consumer demand, the demand will be met prior to a deadline imposed by the Commission.<sup>2</sup>

The third prong of the forbearance test, "forbearance from applying such provision or regulation is consistent with the public interest" is easily demonstrated. Without forbearance, cellular subscribers will have the convenient feature of number portability. However, this feature can only be provided by 1999 by siphoning off funds dedicated to building out systems, increasing coverage and rolling out cutting edge technology. By licensing multiple wireless carriers, the FCC has stoked the fire of competition and it is the consumer that has reaped the benefits. As systems have expanded and been technologically enhanced, the price of service has dropped. If the FCC fails to grant the Petition, it will

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<sup>1</sup> See In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges, CC Docket No. 96-262, First Report and Order, FCC 97-158 at ¶ 363 (rel. May 16, 1997).

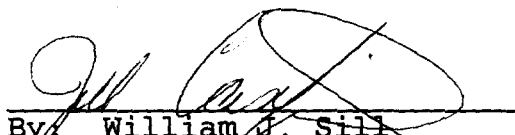
<sup>2</sup> Although number portability will be convenient, UCN has not detected a groundswell of demand for this feature from its subscribers.

throttle back the competitive engine by diverting carriers' funds away from system build out and deprive the public of the fruits of competition. Forbearance from applying the number portability deadline is not only consistent with the public interest, UCN respectfully submits it is mandated by the public interest.

The consumer benefits from seamless coverage and price competition. Forcing the industry to spend millions of dollars for a service not yet in demand harms the public interest by forcing resources away from there where it is most beneficial.

Upstate Cellular Network respectfully submits that the Federal Communications Commission forbear from applying the number portability requirement to CMRS providers at this time.

Respectfully submitted,  
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